

COMMISSION ON COMMON OWNERSHIP COMMUNITIES

Minutes of the Monthly Meeting
Executive Office Building, 101 Monroe Street,
Main Lobby Conference Room, Rockville, MD
January 3, 2018

The monthly meeting of the Commission on Common Ownership Communities was called to order at 7:10pm by Chairman Dr. Rand H. Fishbein, PhD.

Commissioners Present: Branda, Burrows, Ethier, Fine, Fishbein, Fonoroff, Gardner, Gelfound, Majerle, Oxendine, Winegar, Viney, & Valley

Commissioners Absent: Koonin

Also attending: Walter Wilson, Associate County Attorney & Mark Anders, CCOC staff

Visitors: Larry Downey [Grosvenor], Atwan Kwan [Living Simple Properties Mgmt]

1. Commissioner Winegar moved to reaffirm the commission's decision not to audio-record meetings. After discussion, the motion was approved by majority vote, Commissioners Gardner and Viney abstaining. Recorders hired for this meeting were released at 7:30pm.
2. Commissioner Winegar moved to request DHCA provide a "minute-taker", not a recorder, and to respect the decisions of the commission. The motion was approved by unanimous vote.
3. Commissioner Winegar moved to appoint Commissioner Viney as Recording Secretary pro tem. The motion was approved by unanimous vote.
4. Approval of Minutes: Commissioner Fishbein moved to accept the minutes of the December 6, 2017 monthly meeting. The motion was approved by majority vote, Commissioner Oxendine abstaining.
5. Open Forum: Mr. Downey greeted the commission; Mr. Kwan to observe
6. Chair's Comments: Dr. Fishbein reported that John Radcliffe had resigned, effective January 1, 2018. The commissioners held a moment of silence in honor of Ken Zajik who passed away December 12, 2017. Further comments by the Chair are **attached**.
7. Election of Officers: Commissioner Fishbein introduced the candidates for Chair [Marietta Ethier & Mark Fine] and Vice-Chair [Ilana Branda & Mike Burrows], allowing each two minutes to present their qualifications and vision for the commission's future. After a brief recess for counting the ballots, Commissioners Fine and Burrows were elected Chair and Vice-Chair respectively.
8. Submission of disputes for consideration of jurisdiction:
After discussion about the ongoing administrative problems hampering the commission's work and the timely delivery of justice to complainants, Commissioner Gardner moved that Jay Greene [DHCA] be invited to the February meeting to address the Commissioners' concerns. The motion passed by unanimous vote.
 - a) #55-17 Barnes-Pretlow v. Mutual 6A
 - b) #61-17 Jarboe v. The Takoma Condominiums**[Documentation for both cases is incomplete, missing Respondents' responses.]** After discussion, Commissioner Gelfound moved to table both cases until the February meeting, pending receipt of full file. The motion passed by unanimous vote.

- c) #2018-40 Dillin v. Willoughby of Chevy Chase **[Case file missing; case removed from meeting agenda by staff]**: Commissioner Ethier summarized facts of the case. Stay was lifted based on business judgment rule and a lack of evidence of bad faith.
Commissioner Gardner moved that without full documentation on the other issues in the complaint, the decision on jurisdiction should be deferred. The motion passed by unanimous vote.

9. County Attorney Report:

Comments and edits to Jay Greene at DHCA re proposed changes to 10B; **re “lift stay”, the statute requires a 3-person panel [not a committee] and the Commission should discuss its’ composition at the next meeting.**

10. DHCA Staff Report:

New hire to start next week but is not a management or supervisory position. Statistical report for December 2017 circulated at meeting.

11. Committee Reports:

Education Committee [Mark Fine, Chair]:

- a) Commissioner Ethier reported on the RFPs going out to law firms. Commission suggested skipping REOI step and just sending out RFPs as presented.

Process & Procedures Committee [Marietta Ethier, Chair]:

- a) A policy statement and procedures for issuance and enforcement of civil citations in the case of non-compliance with Commission decisions and orders **[attached]** was discussed. Commissioner Ethier moved that the commission adopt the policy and procedures as presented. The motion passed by unanimous vote.
b) Commissioner Fishbein began discussion of *perceived* conflicts of interest in cases where a Commissioner is a party to a complaint being heard by fellow-Commissioners. County Attorney Wilson reminded the Commission that past practice was to refer such a case to a hearing examiner at OZAH. Commissioner Fishbein moved that the discussion, and proposed policy, be referred to the Process & Procedures Committee once the D&O has been delivered on the case. The motion passed by majority vote, Commissioners Fine, Gardner, Winegar, and Viney abstaining.

Information & Technology [Mike Burrows, Chair]: Commissioners discussed the association and board member database posted on the CCOC website. Much of the information is outdated, incomplete, or private. Commissioner Branda moved that the database be removed from the website, and not replaced pending corrections, and not without Commission approval. The motion passed by unanimous vote.

12. Adjournment: Dr. Fishbein adjourned the meeting at 9:35pm. **The next monthly meeting of the Commission will be held on February 7, 2018 at 7:00pm.**

13. Attachments:

Dr. Fishbein’s Comments [Page 3]

Policy & Procedure on Non-compliance with Commission Decisions & Orders [Page 7]

Minutes submitted by:

Kathy Viney

Commissioner & Recording Secretary

Rand H. Fishbein, Ph.D., Chair, CCOC
Report to the Commission
Monthly Meeting – January 3, 2018

Due to a full meeting agenda that did not allow for a full report from the Commission Chair, the Chair has revised and extended his remarks. This is Dr. Fishbein's final report to the Commission while serving as Chair of the CCOC.

Dr. Fishbein, Chair of the Commission on Common Ownership Communities (CCOC), reported on the following:

- **Commissioner Zajic's passing:** Dr. Fishbein noted the passing of retired Commissioner Ken Zajic on December 12, 2017 and recognized those who represented the Commission at his funeral and burial service. He then led the Commission in a moment of silence in honor of our dear friend and colleague. (Dr. Fishbein's remarks on behalf of the Commission, circulated upon the news of Ken's death, are included at the end of these minutes.)
- **Election of Commissioners Fine and Burrows as New Chair and Vice-Chair:** Dr. Fishbein congratulates Commissioners Fine and Burrows for their elevation to the positions of Chair and Vice-Chair in the election held at the January meeting. Through their work on the Education, Legislative, Information Technology (IT) and Process and Procedures Committees, both had demonstrated an exceptional commitment to, and skillful execution of, a multitude of issues now facing the Commission and the constituency it serves.
- **Thank You to Each Nominee:** Dr. Fishbein wishes to thank each of the Commissioners who ran in this year's CCOC election for their steadfast dedication to our work and their willingness to assume the burdens of leadership. With the vote concluded, we must all come together in solidarity and comity if we are to successfully address the many challenges before us.
- **Dr. Fishbein Thanks Commissioners:** Dr. Fishbein extends his deep appreciation to his colleagues on the Commission for the honor and privilege of serving as their Chairman for the last three years. He wishes to thank his co-Chair, Aimee Winegar, for her service to the Commission and the County during this period and for the wise, informed and seasoned judgement she continues to bring to all of the issues before the Commission. Her contribution to the work of the Commission has been indispensable. Her friendship, counsel and always pleasant demeanor have lightened the burdens of our work and reinforced the Commission's reputation for excellence in both education and alternative dispute resolution.
- **Chair's Note to Mr. Greene:** The Chair sent an e-mail to Jay Greene on December 18, 2017 in which he expressed concern about cases being routed to the MOCO Conflict Resolution Center (CRCMC) instead of to the Commission's mediator, Michael Lang, in the belief that Mr. Lang had limited availability. Dr. Fishbein wrote: *"As recently as this past Saturday, December 16, 2017, Michael Lang wrote to me in an e-mail: 'I have plenty of dates on offer, and there is no transportation problem since I use Uber to get to the temporary OCP offices, where they have 2 small conference rooms reserved for each mediation, and I have a dedicated computer there. The dates for January and February are all on the on-line calendar.'" As of this writing, Mr. Greene has not responded to the Chair's e-mail.*
- **Continued...** In his e-mail to Jay Greene, the Chair also expressed concern about using the CRCMC and stated: *"The use of the MOCO Conflict Resolution Center to handle COC mediations was discussed at the Commission's December meeting. Commissioners expressed great concern that the Center lacks the core competencies necessary to conduct thoughtful, fair, informed and experience-based mediations on cases involving the fine nuances of common ownership law, policy or judicial opinion. This belief was confirmed by one Commission who recently participated in a Center mediation and was told point blank by Center personnel that they had no knowledge of, or training in, the HOA Act, the Condo Act or any of the other core documents pertaining common ownership communities, include governing documents. Indeed, Commissioners are asking: Why, at a time when*

under the law all Board members and all Commissioners must be trained, are conflicts being referred to untrained and admittedly novice COC mediators through CRCMC?"

- **Draft Letter to Executive Leggett and the Council:** At the request of the Commission, the Chair has prepared a draft letter to the County Executive and Council outlining the problems currently plaguing the CCOC office and asking for immediate relief. The letter is being revised in light of pending discussions with DHCA management and new revelations regarding the mishandling of cases, poor case file maintenance, the lack of responsiveness to public inquiries and inability of staff to address process legal motions and dispatch notices to disputants and hearing panel members in a timely manner.
- **CCOC Annual Survey:** This is the time of year when DHCA sends out the annual Communities' Survey prepared by the Commission. I would recommend that the Commission review the 2017 survey to see if any modifications are required.
- **Making Annual Survey Mandatory Under Chapter 10B:** Tim Goetzinger contacted the Chair in an e-mail dated December 17, 2017, conveying his support for the idea that Chapter 10B be amended to make the completion of the annual CCOC survey mandatory on all associations. He noted: *"We have a similar survey for rental properties and we get a very high response rate because we will take folks to court who do not complete the survey. I believe the rental response rate is over 95% whereas the COC is in the 60% range. I think I mentioned this in the past, but let me know if this is something the CCOC is interested in."* The Chair responded that current law mandates the registration of all association directors (currently about 5,000 in number). Failure to do so is a Class 'A' violation. At present, the Commission is unable to track compliance since it lacks the digital infrastructure for a director's database or the ability to monitor their registration.
- **Growing Case Backlog:** As of today, there exists a backlog of approximately 60 cases in the CCOC office. This is up from approximately 20 in November 2017, and 35 in December 2017. This is a matter of great concern since Commissioners and staff worked long hours last year to process most of the 120 backlogged cases that existed at the time the current staff began work in the office in May, 2017. It is believed that the majority of these cases have yet to be recorded or scanned into the Commission's case management system. Moreover, a recent review of many of the case files by Commissioners revealed missing or misfiled documents and incomplete intake forms.
- **Revenue and Expense Report:** The Chair requests that all Commissioners review the December CCOC Revenue and Expense Reports prepared by DHCA and to communicate to the Chair in thoughts or concerns they might have.
- **Possible CountyStat Partnership:** CountyStat is the County body responsible for collecting, analyzing and reporting on data trends in County programs, demographics, the local economy, housing and any other matter of interest to the County government. Absent from its years of tracking is the composition and evolution of common ownership communities. The Chair contacted the head of CountyStat, David Gottesman, and described the Commission's need for better data on COC's. The Chair also proposed a partnership with CountyStat in the development of a new, comprehensive survey of COC's to provide a baseline for County planners and the Commission in the furtherance of our mission. Mr. Gottesman expressed his interest in further discussions. However, before these discussions can proceed, Jay Greene must first give his assent. The Chair believes that working with CountyStat would be a great opportunity for the Commission and should be pursued aggressively.
- **Resignation of Commissioner Radcliffe:** Commissioner John Radcliffe informed the Chair in an e-mail on January 3, 2018 of his intention to leave the Commission effective immediately. The Chair wrote to

Commissioner Radcliffe: *"John: Your note of resignation from the CCOC is received with much regret. I know I speak for all of our colleagues when I say it was both a pleasure and an honor to serve with you on the Commission. Your friendship, wise counsel and always pleasant and courteous demeanor will be sorely missed...."*

- **Thank You:** On behalf of the entire Commission, the Chair wishes to thank Commissioner Fine for providing a delicious sandwich platter for our meeting, and Commissioner Viney for volunteering to take the minutes of this month's meeting.

Kenneth Zajic (1934-2017)

Dear Commissioners, Panel Chairs, Staff and Friends,

I am writing to let you know that our dear colleague and friend, former Commissioner Ken Zajic passed away peacefully yesterday, December 12, 2017, at approximately 9:15 p.m. after a courageous fight against a rapidly advancing cancer. Ken spent the last several weeks of his life at the Casey House Hospice in Montgomery County where he received palliative care from an expert staff of nurses and doctors. Ken's wife, Lois, and family were at his side in his final days.

We Remember Ken...

Ken was a much-valued member of the Montgomery County Commission on Common Ownership Communities (CCOC) where he served with distinction from 2011-2017. His contributions to the work of the Commission extended across all of its mission areas including the Education, Legislation, Process and Procedures and Interview Committees as well as projects involving Outreach and Advocacy. Ken was an ardent volunteer, always willing to participate as a resident member of the Commission's quasi-judicial hearing panels. Several of these panels returned landmark decisions that will continue to influence policies in common ownership communities across the County for years to come.



On July 22, 2017 Ken, along with two former Commission colleagues, received the CCOC Blue Flame Award for Distinguished Service to the Commission and the County.

Ken never shied away from difficult or controversial issues. Often, it was his voice that was the first and last to be heard during monthly meetings of the Commission. After many of his colleagues would exhaust themselves debating a particular point of law or policy, Ken would weigh in with his characteristic self-effacing, but probative style, turning the matter on its head and challenging everyone in the room with an analysis of the pending question that they never had considered. As Ken frequently observed, his training as an engineer taught him to think out-of-the-box when others often tended towards the obvious linear solution to a problem. He enjoyed stress testing every argument and applying what in the Jewish tradition is known as "pilpul," the Talmudic term used to describe a rhetorical process that the Sages used to parse legal texts and formulate decisions.

Ken was a fierce champion for good governance in administration and cared deeply for the well-being of those who live in condominiums, homeowner associations and cooperatives. He believed that everyone, regardless of their position, was due fair and honest treatment by boards of directors as they applied their communities' bylaws for the benefit of all.

Ken understood that education, coupled with common sense, transparency and accountability in leadership, were essential elements in the promotion of harmony in communities. The CCOC, he believed, had a central role to play in this effort. By providing a wide array of quality programs in management best practices, communities could be strengthened, conflicts between residents and boards could be more quickly resolved or averted, and property values could be enhanced. So committed was Ken to the CCOC and its mission, that after the County passed a law in 2016 requiring mandatory training for all Commissioners, Ken took up the challenge and drafted the first course of its kind in the state.

Ken was born and raised in Baltimore. He earned both his BSE ('62) and MS ('65) degrees from The Johns Hopkins University. Much of Ken's professional career was spent as a registered engineer working for the Baltimore Gas and Electric Company. Ken and his wife moved to The Greens at Leisure World in 2004, where he quickly became involved in the governance of the condominium and later served as a member of the Board of Directors as well as several committees. For three years he led The Greens as its president before taking up the mantle as an alternate member of the Leisure World Community Corporation Board of Directors. While in this position, he focused his time on three standing advisory committees: Budget & Finance, Community Planning, and Energy Conservation, serving as chairman of the latter two. In addition, he was a member of a special committee which developed Leisure World's internal dispute resolution policy and process.

May Ken's memory forever be for a blessing and may the good works that defined his life continue to be a model and source of inspiration for those touched by his spirit.

In sorrow and deepest respect,

Rand H. Fishbein, Ph.D.

Chair, Montgomery County Commission on Common Ownership Communities

- On behalf of the Commissioners, Panel Chairs and Staff of the CCOC

COMMISSION ON COMMON OWNERSHIP COMMUNITIES ('CCOC')

POLICY ON ISSUANCE AND ENFORCEMENT OF CIVIL CITATIONS

INTRODUCTION:

Parties filing a complaint with the CCOC should have some assurance of enforcement of a CCOC panel's orders. The CCOC has little statutory authority to enforce its' decisions and orders. The issuance of civil citations and enforcement of same is a remedy available for use by the CCOC.

LANGUAGE TO BE INCLUDED IN ALL DECISIONS

" NON-COMPLIANCE

THE PARTIES ARE HEREBY NOTIFIED THAT SECTION 10B-13 (j) OF THE COUNTY CODE DECLARES THAT FAILURE TO COMPLY WITH THIS DECISION AND ORDER IS PUNISHABLE BY A \$500.00 CIVIL FINE AS A CLASS A VIOLATION AS SET FORTH IN SECTION 1-19 OF THE COUNTY CODE. THIS CIVIL FINE MAY, AT THE DISCRETION OF THE COMMISSION, BE IMPOSED ON A DAILY BASIS UNTIL THERE IS COMPLIANCE WITH THIS DECISION AND ORDER.

IN ADDITION TO THE ISSUANCE OF A \$500.00 CIVIL FINE, THE COMMISSION MAY ALSO REFER THE MATTER TO THE OFFICE OF THE COUNTY ATTORNEY IN ACCORDANCE WITH COUNTY CODE SECTION 10-13 (i) FOR APPROPRIATE LEGAL ACTION.

IN THE EVENT OF NON-COMPLIANCE WITH ANY ORDER BY THE DEADLINE SET FORTH IN THIS DECISION AND ORDER, THE PARTY IN WHOSE FAVOR THE ORDER HAS BEEN ISSUED MAY REQUEST ENFORCEMENT OF THE ORDER BY SUBMITTING A "COMPLAINT FOR ENFORCEMENT" TO THE OFFICE OF COMMON OWNERSHIP COMMUNITIES WITHIN THE DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, USING THE FORM AVAILABLE AT THE FOLLOWING WEBSITE....."

INTERNAL POLICIES AND PROCEDURES FOR ISSUANCE AND ENFORCEMENT OF CIVIL CITATIONS

1. Upon receipt of a Complaint for Enforcement the staff will send the other party a notice using the attached as a template.
2. If the staff receives a response from the non-complying party that questions the allegations contained in the Complaint for Enforcement the staff will consult the panel chair to decide on next steps.
3. If the non-complying party does not respond or if the response is unsatisfactory the staff will cause a civil citation to be issued if the staff is reasonably satisfied that there is noncompliance with the Commission's Decision and Order.
4. The staff will use the uniform civil citation form.